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**BEFORE THE STANDING COMMITTEE OF THE
UNITED STATES SENATE DAILY PRESS GALLERY**

In Re:

Date : 4/15/02
Time : 10:00 a.m.

Capitol Building, Room SC4

Application of WorldNetDaily.com
for Permanent Press Credentials

OPENING BRIEF OF APPLICANT

[By Fax & U.S. Mail Filing].

Applicant, WORLDNETDAILY.COM respectfully provides the following Opening Brief in support of its position before the Standing Committee of Correspondents of the United States Senate Daily Press Gallery:

I.

PROCEDURAL INTRODUCTION

This brief is offered in support of the appeal from the February 8, 2002, written denial of permanent Senate Press Gallery credentials for Applicant, WorldNetDaily.com. The formal request for reconsideration was made by the applicant on February 15, 2002. On March 13, 2002, the Standing Committee, through its counsel, indicated that the matter would be heard on April 15, 2002, at 10:00 a.m., at the United States Capitol. The Standing Committee has allowed for a twenty minute presentation by applicant to be followed by a

question and answer session between the Committee and WorldNetDaily.com.

II.

ISSUES PRESENTLY BEFORE THE STANDING COMMITTEE

The Standing Committee, by and through its counsel, has asked that the facts and argument relating to this matter be limited to the following two areas of concern:

1. "The committee's finding that Worldnetdaily [sic] does not provide "daily news with significant original reporting content" (1996 Internet Policy) as distinct from links to other news organizations, or promotions for books, videos or merchandise.
2. The determination that Worldnetdaily [sic] is not separate and independent from the Western Journalism Center and therefore in conflict with Rule 4(b) of the Gallery Rules and Application Requirements."

Aside from addressing these issues, it is also the applicant's position that the denial of credentials in this case was not consistent with the United States Constitution, nor with First Amendment common law, and that the denial clearly violated the guarantees of Equal Protection and Due Process. In part, WorldNetDaily is concerned about the fact that admissions standards were not equally applied to them as compared to other members of the Press Galleries. Indeed, there are existing members who clearly violate Rule 4, as presently interpreted by the Standing Committee, and who are much less qualified for admission, by such standards, than WorldNetDaily. This disparity creates the clear impression that the Standing Committee is interpreting Rule 4 in such a way as to deny WorldNetDaily credentials only because of its reporting style, perceived political bent, or some other unstated basis. If the applicable Rules were applied to all applicants equally, WorldNetDaily is and would be entitled to permanent credentials. As a consequence, it is respectfully submitted that the Standing Committee is coming up squarely against the admonitions of the Court of Appeals and District Court in the *Consumers Union* case, *infra*.

Furthermore, it is noteworthy that the basis for denial in the present instance is not the same factual or legal basis that can be found in the matters of *Schreibman v. Holmes*, 1997 WL 527341 (1997, D.D.C.)¹ or *Consumers Union of United States, Inc. v. Periodical Correspondents' Association*, 515 F.2d 1341 (DC Cir., 1973)². This instant case is entirely unique on its facts and will later present with a justiciable controversy in the event that the denial of WorldNetDaily's application is affirmed by the Standing Committee.

Specifically, the Standing Committee is not, by any discernable basis, alleging that WorldNetDaily is an advocacy group, lobbying group, failing to neutrally report news, acting as a non bona fide journalist, causing physical congestion within the Press Galleries, abusing rights formerly granted to it or its reporters (i.e., Paul Sperry), or importuning any of the Honorable Members of the House or Senate. These are the only factual criterion by which the Press Galleries have been historically authorized by the Legislature to limit admissions. These are the stated purposes for allowing the Standing Committee to enforce Rule 4, the 1996 Internet Policy, and other Press Gallery Rules. This case presents with no such facts or circumstances. See, 515 F.2d 1342, 1343. The purposes of allowing discretion over admissions are not fulfilled by the denial in this case.

Finally, the Standing Committee apparently does not have the power to judge or

¹ Schreibman failed to gain credentials for failure to comply with Gallery Rules 1 and 2. No specific factual reasons were given for the denial of his application. The Gallery did not feel that Schreibman published for profit and did not earn his livelihood as a journalist. Here, there is no doubt that WorldNetDaily is a for-profit entity and that its staff are dedicated journalists. In contrast to *Schreibman*, WorldNetDaily is respectfully claiming that the Committee has acted outside the scope of its valid Constitutional authority by denying the instant application.

² In *Consumers Union*, the basis for denial was that Consumer Reports was a direct advocacy group and could not have been said to be reporting "news" per se'. Here, the facts show that WorldNetDaily is fully dedicated to publishing news items of its own and from alternate and mainstream news sources. And again, this case can be contrasted with *Consumers Union* inasmuch as WorldNetDaily does claim that the determination made on the instant application was not an act that can be said to have occurred within the "regular course of the legislative process" since Constitutional bounds are alleged to have been violated.

discriminate against the moral value, ethnicity, race, religious background, gender influence, or political views of the reporting source as a basis for denying an application. *See, generally*, 28 U.S.C. § 1983. Succinctly stated, it is not allowed to engage in otherwise unconstitutional discrimination and must act only within its authorized powers as defined by the purposes underlying any restrictions on admission. *See*, 515 F.2d 1348-1350. Given the materials relied on by the Committee in its earlier denial³, it can be reasonably inferred that the Committee has acted out of a disdain for what it perceives to be the 'socially conservative' bent of WorldNetDaily, some perceived tendency toward a Christian worldview, and/or some other incorrect perception relating to WorldNetDaily's reporting style and editorialization of news related items.⁴

III.

STATEMENT OF DISPOSITIVE FACTS

WorldNetDaily denies that the factors used in this case were constitutionally sufficient for denying the application for permanent press credentials. In short, there was no rational

³ As provided to WorldNetDaily's counsel by the Standing Committee, through its counsel, Frank Wiggins, Esq.. The list of items relied upon by the Committee in denying credentials is a list of materials that clearly suggests that being 'conservative' has something to do with Press Gallery admissions requirements. One is led to believe that the denial of the application in this case was spurned by content-based discrimination or some animosity against Joseph Farah or Western Journalism Center, because of their political views. There is nothing in the Rules that suggests that ownership by a nonprofit entity, even if complete, would preclude admission.

⁴ The materials provided by Mr. Wiggins make replete reference to stories about "conservatism," "Larry Klayman," "[c]onspiracism," "the New Right," "[c]onservative bent," "[c]ulture war," "Judicial Watch," and other references to what is commonly associated with social conservatism. WorldNetDaily happens to be supported by, and represents, many different socio-political views and refuses to be pigeonholed in the manner that the Committee has chosen. What is unlawful about the Committee's reliance on the materials listed by Mr. Wiggins is that there was a specific focus on the *content* of certain materials written by WorldNetDaily's staff. The *content* was, in part or whole, used as an admitted basis for denial of the application. Content-based discrimination is per se a violation of the First Amendment.

1 basis for denying the application in this case. As shown below, WorldNetDaily.com has a
2 solid history of providing unique, breaking, and original news and news commentary stories
3 to the public. It is not contravening any of the purposes laid out by the Legislature for
4 allowing denial of press credentials. Moreover, the applicant is not controlled, nor wholly
5 owned, by any entity as suggested by the original denial.⁵

6 WorldNetDaily.com, Inc., began operating as a for-profit independent corporation on
7 October 1, 1999. Admittedly, although irrelevant in light of the plain language and meaning
8 of the Press Gallery Rules, it was started as an offshoot of Western Journalism Center, a
9 nonprofit entity.

10 In any event, WorldNetDaily is now a leading Internet news site in both traffic and
11 influence. In fact, WorldNetDaily.com has broken some of the biggest, most significant,
12 and most notable investigative and enterprising stories in recent years.

13 In specific reference to the stated concerns of the Committee, each of the following
14 facts is true as a matter of law and fact:

- 15 ■ WorldNetDaily fully controls the editorial processes and publication of its news
16 stories.
- 17 ■ WorldNetDaily.com was voted the most popular website on the Internet every week
18 for more than full year in 1999 and 2000 on Global100.com.
- 19 ■ WorldNetDaily.com consistently ranks as the "stickiest" news site on the Internet,

20
21 ⁵ Notwithstanding WorldNetDaily's fully independent legal and factual standing, the
22 Standing Committee continues to allow admission of news agencies who are ostensibly
23 controlled by religious entities/persons (Washington Times, Christian Science Monitor, Religion
24 News Service), nonprofit entities (Associated Press, Boston University News Service, Medill
25 News Service), and by totalitarian or other governments (Vietnam News Agency, Beijing Daily,
26 Xinhua, and Egypt's Al-Ahram). Obviously, prior application of Rule 4(b) and the 1996 Internet
27 Policy have hardly precluded admission simply because of the ownership, nonprofit status, or
28 perceived control of an applicant. It is obvious that the Standing Committee believes that
ownership is not the controlling factor in application or the construction of Rule 4(b).
WorldNetDaily is lawfully entitled to the same presumptions and benefits extended to the
aforementioned entities. The Committee may not arbitrarily discriminate against an applicant.

meaning readers spent more time on it than on any other -- including giants MSNBC and ESPN.

■ WorldNetDaily.com often ranks at the top of the news pack in number of pageviews per user and minutes per page - two other important categories measured by Internet ratings agencies.

■ WorldNetDaily currently attracts nearly 2.5 million unique visitors a month and more than 40 million pageviews, according to its own internal monitoring software. These numbers have been consistent for several months now.

■ WorldNetDaily has its own board of directors, executive officers, articles of incorporation, corporate bylaws, independent financial reporting requirements to the Internal Revenue Service, independent legal duties to avoid corporate conflicts of interest, and independent fiduciary duties to *all* of its shareholders. Specifically, it cannot be, and is not, controlled by Western Journalism Center.

■ WorldNetDaily presently employs more thirteen (13) full-time editorial staff, three (3) part-time editorial staff, and approximately a dozen free-lance reporters who contribute regularly to the news product/content offered to the public. These employees are paid to provide WorldNetDaily with original news content and to blend that content into the website along with news from other sources and commentary. If WorldNetDaily were merely providing unoriginal links to other websites, or merely trawling other news sources for information, news staff requirements would be much less intensive. The amount of news staff employed shows that WorldNetDaily is legitimately dedicated to looking for original news content and reporting it to the public.

■ As a result of the vigorous efforts of its news and editorial staff, WorldNetDaily has archived more than 14,000 original news items and columns since its inception. Most of these were generated after WorldNetDaily became a for-profit entity in October of

1 1999. About half of these are news stories. The other half consist of editorials or
2 other commentary, which are typically about current news items.

3 ■ On the average, by reference to its archives, WorldNetDaily publishes five (5)
4 original news pieces per day and has regularly done so, for seven days a week on the
5 average, for the last three years. As to actual content, WorldNetDaily focuses heavily
6 on news stories of national and international significance. Moreover, WorldNetDaily
7 was the first to report many news items, even before CNN, MSNBC, and the existing
8 members of the Press Galleries.

9 ■ In addition to the web-based news stories, WorldNetDaily also publishes a monthly
10 magazine ("Whistleblower"), containing all original content relating to current events
11 and news. Typically, the magazine consists of approximately 56 pages of material.

12 IV.

13 STANDARDS FOR ADMISSION TO THE PRESS GALLERIES

14 According to the Standing Committee's own printed/published materials, in order to
15 be admitted to the United States Senate Daily Press Gallery, one must pay an \$8.00
16 application fee and comply with the following standards⁶, as enunciated on the application
17 form. There are no other obvious requirements.

18 "Membership in the Press Galleries is restricted to bonafide⁷ working press living in
19

20 ⁶ One is left to wonder about how this standard would have ever placed WorldNetDaily
21 on notice of the fact that Rule 4(b) would be later construed to deny admission. The application
22 itself mentioned absolutely nothing about ownership or control or the existence of some
23 incidental requirement that there be "significant" original news content. However, using the
24 application's standards as the only obvious/open statement of standards for admission, one can
25 readily see how Planetgov.com or other members may have gained admission (i.e., as long as
26 one is 'disseminating' news, regardless of originality, there shouldn't be an admission problem).

27 ⁷ There is no palpable dispute that WorldNetDaily is not "bona fide" since its reporters
28 have been given temporary credentials time and again. The term "bona fide" appears to be
uniformly applied and interpreted by the Committee for determining the issuance of any
credential to a news reporter. As such, WorldNetDaily's compliance with Senate Rule 33 does

the Washington, DC area⁸ and working for newspapers or news services engaged in the daily dissemination of news.⁹

Members of the Press Galleries shall not engage in lobbying or paid advertising, publicity, promotion work¹⁰ for any individual, political party, corporation, organization, or agency of the Federal Government.¹¹

Members of the Press Gallery also shall obey all security regulations when entering the Capitol and its office buildings.¹²

Violation of any of these provisions will result in revocation of Gallery

not seem to be a legitimate issue in this case. Compliance with House Rule 6 also seems to be intimated by the Standing Committee's historical dealings with Paul Sperry and WorldNetDaily as a whole. In order to have received any prior passes, it would have to have been found that Sperry or other WorldNetDaily correspondents were "reputable" as required by Rule 6(1)(2).

⁸ This element is not challenged by the Committee.

⁹ This element has only been challenged in part by the Committee. Nothing in the denial of the application suggests that there is not a daily dissemination of news by the applicant. The Committee seems only to feel that it is not "significant." WorldNetDaily challenges this assertion by referring to its publication of approximately 14,000 news related items since 1999, and the employment of multiple news-generating staff members.

¹⁰ There is nothing in the facts or correspondence from the Press Gallery to suggest that WorldNetDaily is accused of any violation of these prohibitions.

¹¹ WorldNetDaily has not been charged with violating this requirement. Notwithstanding, as a Constitutional matter, one can only assume, as a matter of practice, that application of this Rule does not preclude Members from endorsing candidates for federal office and other such political activities. It is certainly no secret that this is a regular practice within the business of print media, and that many of the Gallery's members have endorsed candidates, editorialized for and against federal office holders, and accepted advertising dollars from federal office holders or their political campaigns or constituents.

¹² There is no allegation that WorldNetDaily has violated this requirement. If anything, WorldNetDaily's Paul Sperry has been allowed entrance to the Gallery on a temporary basis many times (In fact, he previously held permanent credentials while working for another entity).

1 membership.¹³" (See, "Application for Accreditation to the Press Galleries of Congress",
2 Attached as Exhibit "1." Also, see, "Frequently Asked Questions" Sheet, Attached as Exhibit
3 "2").

4 The Senate Press Gallery's website and other immediately available information does
5 not suggest that there are any other applicable Rules for admission other than the "Rules
6 Governing Press Galleries" (Exhibits "5" and "6") and the standards set forth in the
7 application itself (Exhibit "1"). No obvious reference to any "1996 Internet Policy" is to be
8 found in the materials that an applicant could be reasonably expected to rely on in applying
9 for credentials.

10 As shown throughout this brief, there is nothing in the Rules or the application form
11 to suggest that WorldNetDaily does not qualify for admission. Neither source says anything
12 that could even suggest that WorldNetDaily is not in the independent business of
13 disseminating news on a daily basis. Neither says anything about "significant" original news
14 content or some unstated limitation on ownership of a news entity. The absence of such
15 references renders the decision to deny WorldNetDaily's application mysterious at best. At
16 worst, the appearance of some discriminatory and unlawful bias is created. Again, much of
17 the material used to deny WorldNetDaily's application relates to "conservatism" or other
18 socio-political viewpoints and written content. Viewpoint and content-based discrimination
19 against an applicant is per se' unconstitutional.

20 V.

21 ARGUMENT

22 By denying WorldNetDaily's application for permanent credentials, the applicant was
23 denied the following benefits and privileges, among others not mentioned explicitly:

- 24 • Permanent access to press work space;

26 ¹³ Neither WorldNetDaily or its staff have ever been subjected to any revocation of
27 rights.

- Access to legislators and staff;
- Files concerning the history and actions of the Legislature;
- Access to official schedules and notices;
- Copies of Roll Call votes;
- Copies of hearing testimony;
- Meaningful use of press phone booths and desks;
- Immediate access to Senate news;
- Immediate access to relevant press releases;
- Other benefits, allowing the free exercise of press rights, directly or indirectly extended to applicants in same or similar situations as those of WorldNetDaily. Such benefits include, but are not limited to, press admission to the Republican National Convention, Democratic National Convention, President's inaugural events, and other national events of high relevance to news publishing. (See, Exhibits "2," "3," "4").

Each of these benefits, extended to more than 300 other media outlets by the Committee, is a necessary and expected part of reporting news from Washington, DC. Moreover, these benefits relate directly to the exercise of the right to engage in freedom of the press. The right to freedom of the press has been held, time and again, to be a fundamental right that exists at the very core of our system of government and, as such, is a fundamental right that cannot be infringed without some compelling state interest. See, generally, *Near v. Minnesota*, 283 U.S. 697 (1931); *Fiske v. Kansas*, 274 U.S. 380 (1927); *Grosjean v. American Press Co.*, 297 U.S. 233 (1936). There are no compelling state interests which could justify the conduct of the Committee in this instance. The Committee has abused whatever discretion it had concerning the application of WorldNetDaily

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A.

**THE STRUCTURE AND APPLICATION OF THE RULES USED FOR
DENIAL IN THIS CASE ARE UNCONSTITUTIONAL:
IF THE RULES WERE EITHER CONSTITUTIONAL
OR CONSTITUTIONALLY APPLIED,
WORLDNETDAILY WOULD BE ENTITLED TO CREDENTIALS**

The rights to free speech and publication have also been expressly afforded to corporate entities responsible for affording the public access to discussion, debate, and the dissemination of information. Any attempt to infringe on such rights must be supported by a compelling state interest. *First National Bank v. Bellotti*, 435 U.S. 765 (1978); *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991). In other words, while the Press Gallery may have a right to promulgate rules and to oversee admissions, it does not have the right to violate the Constitution, through content-based discrimination and/or unequal application of the Press Gallery Rules to applicants, nor to otherwise violate the civil rights of applicants by discriminatory practices.

As shown below, the denial of WorldNetDaily's application was discriminatory, arbitrary, capricious, and was not supported by substantial evidence. Moreover, the means used to achieve whatever interest the committee may have in seeking "bona fide" press credentials are not narrowly tailored. What is most shameful about this case is the fact that the instant violations of the Constitution are coming from the very heart of our American democracy. It seems almost unimaginable that fellow members of the press, operating as state actors on the Committee, would engage in such discrimination. The Committee, of all governmental agencies, should be the most aware of the Constitutional values at stake in the denial of an application for press credentials. Arbitrary prohibition of access to 'open government' demonstrates the most callous disregard for the First Amendment.

Again, there were two basic reasons for denying WorldNetDaily's application. The

1 first relates to the contention that the Western Journalism Center ("WJC"), a non-profit
2 group, owns a "significant interest in WorldNetDaily." The second contention was that, to
3 be accredited, online publications "must provide daily news with significant original
4 reporting content." The determination of the Standing Committee, in this regard, was not
5 supported by substantial evidence. In fact, evidence of prior approvals of other similarly
6 situated, or less situated, news outlets shows that the Committee has applied arbitrary and
7 discriminatory standards in this case.

8 Nevertheless, as to the first basis for denial, Mr. Keenan, the Deputy Director, cited
9 to the following rule in justifying this determination:

10 "4. Provided, however, that the Standing Committee of Correspondents
11 shall admit to the galleries no person who does not establish to the satisfaction
12 of the Standing Committee all of the following:

13 (a) That his or her principal income is obtained from news
14 correspondence intended for publication in newspapers entitled
15 to second-class mailing privileges.¹⁴

16 (b) That he or she is not engaged in paid publicity or promotion
17 work or in prosecuting any claim before Congress or before any
18 department of the government, and will not become so engaged
19 while a member of the galleries.

20 (c) That he or she is not engaged in any lobbying activity and
21 will not become so engaged while a member of the galleries."

22
23 ¹⁴ This particular subsection is Constitutionally offensive on alternate grounds. It
24 disallows the possibility of having any Internet-based publication of news. For obvious reasons,
25 this rule is contrary to the 1996 Internet Policy cited, after the denial, by the Standing Committee
26 and its counsel. Ironically, this exact thinking resulted in a denial of Press Gallery credentials to
27 Matt Winkler of Bloomberg Business News in 1989. Obviously, Bloomberg now has such
credentials and actually sits on the same Committee that denies WorldNetDaily the same rights
and privileges it had to fight for. See, Holley, J., What's a Bloomberg, *Columbia Journalism*
Review, May/June 1995.

1 (Senate Press Gallery Rule 4)."

2 On its very face, Rule 4 is unconstitutionally vague, amounts to a prior restraint on
3 protected First Amendment freedoms, and does not set forth a basis for denying the instant
4 application. The Rules says nothing about outside ownership, nor any restriction *because*
5 of the status of a shareholder or owner. As indicated above, in Footnote 4, the Committee
6 has never used the nonprofit status of an owner of a news reporting agency to be the basis
7 for denying admission to the Galleries. Indeed, there are many present members who are
8 owned and operated by nonprofit entities or other similar entities (i.e., governments).
9 Interpretation and application of Rule 4(b) simply do not suggest that WorldNetDaily should
10 be denied admission simply because Western Journalism Center owns part of it.

11 To the extent that this Rule allows the Committee to place prior restraints on the form
12 and manner of reporting by WorldNetDaily, or discriminates against the sponsors
13 (shareholders, officers, board members, employees, etc.) of its speech, it creates an
14 impermissible prior restraint on the ability of WorldNetDaily to effectively and equally
15 report on legislative matters. Such restrictions have been held to be violative of the First
16 Amendment. *New York Times v. United States*, 403 U.S. 713 (1971).

17 Moreover, licenses to engage in First Amendment freedoms have long been held to
18 be violative of the First Amendment. *Lovell v. Griffin*, 303 U.S. 444 (1938); *Staub v. Baxley*,
19 355 U.S. 313 (1958); *Saia v. New York*, 334 U.S. 558 (1948). Rule 4 is nothing but a
20 subjective licensing scheme. While one can understand a need to maintain security, or to
21 avoid undue influence over Senate activities, no such factors are present in the
22 WorldNetDaily application for permanent credentials (*See*, Footnotes 6-12, above). Instead,
23 an arbitrary licensing scheme has been used to exclude a media outlet that has a long and
24 reputable history of contributing to American dialogue on issues of governmental
25 accountability, new legislation, and other issues that rest at the very core of unfettered
26 political speech. In short, Rule 4 has been used as an unconstitutional licensing scheme to
27

1 keep WorldNetDaily from being able to effectively report matters of concern to the public.
2 Nothing could be more damaging to the First Amendment.

3 Specifically Rule 4 fails to meet the following constitutional requirements:

4 A. That it provide a specific time for denial or granting of the credentials;

5 B. That there be specific objective standards for issuance;

6 C. That it be a neutral licensing that does not burden one form or source
7 of speech over another (i.e., it does not matter that WorldNetDaily is owned
8 by someone else. All involved parties have equal access to "bona fide"
9 reporting);

10 D. That it provide an adequate review process. See; *FW/PBS, Inc. v.*
11 *Dallas*, 493 U.S. 215 (1990); *Vance v. Universal Amusement Co.*, 445 U.S.
12 308 (1980); *Forsyth County v. The Nationalist Movement*, 505 U.S. 123
13 (1992); *Freedman v. Maryland*, 380 U.S. 51 (1965).

14 The present application of the Press Gallery Rules does not provide a specific time for
15 acting on the application and, given the provision of credentials to nonprofit organizations
16 and totalitarian governments, there is no indication that there are specific objective standards
17 for issuance. To the extent that WorldNetDaily has been burdened, where others less
18 qualified were not, it is obvious that the licensing scheme is not neutral. Finally, there is no
19 written or stated policy showing what review processes are available to an applicant.

20 B.

21 WORLDNETDAILY'S SHAREHOLDER MAKEUP IS NOT 22 RELEVANT TO ITS QUALIFICATIONS FOR ADMISSION

23 Next, whether WorldNetDaily is for profit or nonprofit, or even owned by someone
24 else, is wholly irrelevant to whether or not it has an equal right to gain access to the Senate
25 Gallery. Indeed, the Committee wrongly assumes that the ownership of a newspaper has
26 something to do with being "bona fide," for purposes of Rule 4.

27 This Committee's continuing approval of many other media outlets seriously calls into
28 question the motivation in denying the application of WorldNetDaily. To wit, this
Committee well knows that the Washington Times is likely controlled by a religious entity.

1 It also knows that the Christian Science Monitor and Medill School of Journalism are both
2 nonprofit entities receiving income from private sources. Egypt's Al-Ahram, the Beijing
3 Daily, and the Vietnam News Agency are controlled or owned by foreign states. The
4 singling out of WorldNetDaily, for adverse treatment, makes no sense in light of this
5 Committee's continuing approval of other media outlets who are in more adverse, same, or
6 similar situations as WorldNetDaily. It is not enough for the Committee to suggest that
7 WorldNetDaily is commercialized either. Such discriminatory thinking has been specifically
8 struck down. *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995).

9 Indeed, the act of denying the application in this case effectively forces
10 WorldNetDaily into a situation whereby they are left to continually apply for daily Press
11 Gallery admission. This allows a single reviewing officer of the Committee, with sole and
12 exclusive power, to approve or deny any daily application as he/she wishes. Our Honorable
13 Supreme Court has expressly stricken down any licensing scheme whereby all power is left
14 in the hands of a single administrative arbiter of whether Free Speech rights may be
15 exercised or not. *Cox v. Louisiana*, 379 U.S. 536 (1965).

16 Given the above, it can only be concluded that the Standing Committee does not
17 approve of the reporting style, content, or perceived biases of WorldNetDaily. However,
18 even if the Committee surmised that WorldNetDaily was biased (i.e., 'conservative') in its
19 reporting, because of its owners or partial owners, the act of denial would remain incredibly
20 unconstitutional. *Winters v. New York*, 333 U.S. 507 (1948); *Buckley v. American*
21 *Constitutional Law Foundation*, 525 U.S. 182 (1999). There is a right to editorialize and the
22 Government has no right to discriminate against such activity. *Federal Communications*
23 *Commission v. League of Women Voters*, 468 U.S. 364 (1984). Rule 4 does exactly what is
24 prohibited by the United States Constitution. Any governmental action which limits the
25 publication of truthful information is unlikely to meet constitutional muster. *Smith v. Daily*
26 *Mail Publishing Co.*, 443 U.S. 97 (1979).

1 Finally, to the extent that the actions of the Committee directly affect the ability of
2 WorldNetDaily and its employees to carry out their profession, in terms of reporting about
3 issues of national significance, there is a cogent claim that the civil rights of WorldNetDaily
4 have been violated on yet one more front. *See, generally, Lieberman v. Reisman*, 857 F.2d
5 896 (2d. Cir., 1988) [for the proposition that one's political views cannot be a basis for
6 discriminatory behavior by a governmental actor].

7 C.

8 **WORLDNETDAILY DOES PRODUCE SIGNIFICANT**
9 **DAILY NEWS CONTENT PER SE' AND**
10 **AS COMPARED TO OTHER MEMBERS OF THE PRESS GALLERIES**

11 The second primary reason cited for denial of WorldNetDaily's application was that,
12 to be accredited, online publications "must provide daily news with significant original
13 reporting content." This conclusion was apparently reached, in part, due to the Committee's
14 thoughts about the quantity of staff held by WorldNetDaily or some other unstated factors.
15 Apparently, the Committee overlooked the fact that WorldNetDaily has forty (40) exclusive
16 columnists, thirteen (13) full-time editorial staff, a foreign correspondent, numerous part-
17 time writers, and Paul Sperry, a Washington correspondent (who previously held the exact
18 same credentials now sought by the applicant).

19 In direct contravention to the Committee's actions in this particular case, it is judicially
20 noticeable that the Committee has allowed Bovard News Agency, a one-person operation,
21 and PlanetGov.com, a website wholly reliant on web links, to maintain permanent press
22 credentials. Given WorldNetDaily's considerable reporting staff, and long history of original
23 reporting, it would appear that the Committee's findings, in this regard, are not supported by
24 even a scintilla of acceptable evidence. Again, one can only conclude that there is some
25 reason, well outside the purview of acceptable evidence, for the denial of the application in
26 this case. Given the failure to base its decision on substantial evidence, it would appear that

1 the Committee's actions are content and viewpoint based forms of discrimination. Such
2 discriminatory behavior is unconstitutional. *Capitol Square Review & Advisory Board v.*
3 *Pinette*, 515 U.S. 753 (1995); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Good News Club v.*
4 *Milford Central School District*, 121 S.Ct. 2093 (2001).

5 VI.

6 CONCLUSION

7 For the foregoing reasons, the application of WorldNetDaily.com for permanent Press
8 Gallery credentials should be granted. The decision to deny the application should be
9 reversed.

10 Applicant expressly reserves the right to present any and all other relevant evidence,
11 testimony, or other material to the Committee at the time of the hearing of this matter. After
12 presentation of all evidence, testimony, questions and answers, and briefing, the matter will
13 be deemed submitted, without waiver of appeal or further review.

14
15 Most Respectfully Submitted:

16 DATED : 4/10/02

UNITED STATES JUSTICE FOUNDATION

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18
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